**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**CONTEMPT PETITION NO.88 OF 2007**

Balu Dagdu Waghmare ...Petitioner
vs.
Food Corporation of India
and others ...Respondents

Mr.N.M.Ganguli for the Petitioner
Mr.Mujumdar for the Respondent.

**CORAM: A.S.OKA,J.**
**DATE : JUNE 20, 2007.**

**P.C.:**

1. Heard Advocates for the parties. The breach alleged in this Contempt Petition is of a direction contained in the order dated 4th July 2005 passed by the Division Bench of this court in a Writ Petition. By the said order, the Division Bench directed that the Petitioner herein should be provided work as and when available under the scheme floated by the Food Corporation of India on 14th June 1996 or under any other scheme in substitution of the said scheme.

2. The Petitioner filed a Contempt Petition No.48 of 2006 in this court alleging that the Respondents have committed a breach of the order of the Division Bench. A reply was filed to the said Contempt Petition on behalf of the Respondents stating therein that under the scheme dated 14th June 1996, no further recruitment has been made. In the Affidavit, it was stated that no recruitment scheme was in existence and therefore the Respondents cannot entertain any fresh recruitment. This Court accepted the aforesaid statements made in the reply by observing that there was no reason to

disbelieve the correctness of the said statements. This Court, therefore, discharged the notice issued in the earlier Petition. While passing the said order, it was observed that it will be open for the petitioner to place on record specific material to show that the statements in the Affidavit made by the Regional Manager of the first Respondent were incorrect.

3. On the basis of the said observations, present Petition has been filed by making a specific averment that the first Respondent appointed one Irappa Malik as a Mazdoor on 16th September 2005. It is stated that similarly Shri K.H.Khan and Smt.Jayashree Suresh Adsul were appointed as Mazdoors in the year 2006.

4. A reply has been filed by the Acting Regional Manager of the first respondent. In paragraph 6 of the said reply, it is stated thus :

> "6. With reference to para Nos.7 & 9 of the Contempt Petition, I do not admit that the affidavit made on behalf of the Respondents in the abovesaid Contempt Petition No.48/2006 was false as alleged by the Petitioner. I hereby reiterate and confirm the contents of the said Affidavit in reply. I reiterate that the FCI has neither substituted any other scheme nor recruited any labourer after floating/implementing the scheme of 14.6.1996. The persons referred by the petitioner viz. Shri Irappa Malik, Shri K.H.Khan and Smt.Jayashree Suresh Adsul

have been appointed under entirely different scheme viz "Kith and Kin". The said "Kith and Kin" scheme has to be implemented by FCI as per direction of Govt. of India. Under the said scheme 5% quota has to be recruited against the deceased permanent Departmental Labourer which allows the appointment of relative of deceased permanent departmental labourer on extreme compassionate ground. Thus under the said scheme no new vacancy is created but only the deceased is replaced by his relative. The said "Kith and Kin" scheme is pertaining to Departmental system and has no relevance with the DPS Scheme 1996 i.e. the scheme under which the Petitioner is claiming appointment. Further the abovesaid names referred to by the petitioner are pertaining to Departmental system belonging to Mumbai city godowns whereas the petitioner was working with Ex-contractor at Solapur Godown. I say that the FCI have not filled up a single vacancy under DPS System at Solapur depot. As stated in the affidavit filed on behalf of the Respondents in Contempt Petition No.48/2006 of the Petitioner, 8 vacancies were available with FCI under DPS scheme at Solapur out of which 3 were due to death of workers and 5 were due to retirement of workers and as per policy decision the same were treated to be abolished. With reference to the reply dated 15-2-2007 given by the respondent to the letter of

> petitioner, I say that it is correctly stated therein that the DPS was in existence at Solapur Depot of FCI during 2005-2006 but inadvertently an incorrect statement is made therein to the effect that the said system is still in existence. I say and reiterate as stated above and as stated by Shri Golla Prasad in his Affidavit that the FCI has neither substituted any other scheme nor recruited any labourer after floating/implementing the scheme of 14.6.1996, and that neither the said scheme nor any other similar scheme as referred to in the order dated 14.7.2005 passed in W.P.No.5189 of 2004, is now in existence."

5. The employment given to the persons named in this contempt petition was under entirely a different scheme by the name "Kith and Kin". It is stated that the said scheme has to be implemented by the first Respondent as per the directions issued by the Government of India. It is stated that the scheme floated by the first Respondent on 14th June 1996 is known as DPS scheme. It is specifically stated that under the said scheme, no employment has been granted by the first Respondent.

6. Thus, the first Respondent has explained under what circumstances the persons named in the Contempt Petition have been appointed. As the said persons have been employed under a different scheme, it is not possible to come to the conclusion that there is any breach much less a deliberate

breach committed by the Respondents of the order passed by this Court. Hence, notice issued to the Respondents is discharged. Contempt Petition is disposed of.

**JUDGE**